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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 DEVAUGHN DORSEY,

13 Defendant.

NO. CR08-245RSL

ORDER GRANTING MOTION TO  
SUPPRESS POST-ARREST  
STATEMENTS

14 **I. INTRODUCTION**

15 This matter comes before the Court on defendant Dorsey's "Motion to Suppress  
16 Post-Arrest Statements," Dkt. #131. On February 11, 2009, the Court held an evidentiary  
17 hearing regarding this motion. Dkt. #194. The Court concluded that defendant's Miranda<sup>1</sup>  
18 rights were violated when the detectives continued to question him after he had clearly invoked  
19 his right to counsel. The Court requested further briefing on whether defendant subsequently  
20 re-initiated the interview and waived his right to counsel. For the reasons set forth below, the  
21 Court grants defendant's motion to suppress.

22 **II. DISCUSSION**

23 **A. Background**

24 Defendant is charged with Conspiracy to Traffic in Motor Vehicles, Operating a Chop  
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26 <sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

1 Shop, and Trafficking in Motor Vehicles. Dkt. #101. Defendant was apprehended on May 22,  
2 2008 and eventually transported to a Seattle Police Department building, where Detective Paul  
3 Suguro and Detective Donovan Daly began questioning him in a session that was video and  
4 audio recorded. At the beginning of the session, Detective Suguro read defendant his Miranda  
5 rights, and defendant indicated he understood those rights. Dkt. #151, Attach. A at 2. After a  
6 few minutes of background questions, the detectives began to ask defendant about his alleged  
7 involvement in a suspected auto theft ring. Detective Daly told defendant that he had worked on  
8 defendant's prior federal case, to which defendant responded: "Well it's like this, okay . . . I did  
9 have an attorney present there. I do want an attorney present. But, I do got valuable information  
10 for you . . ." Id. at 14. Detective Daly told defendant, "[W]e're gonna respect your wishes.  
11 But, your opportunity's here, and now gone." Id. The detectives continued the interview for a  
12 few minutes, primarily questioning whether defendant wanted to talk to them without an  
13 attorney. Id. at 15. Eventually, the detectives stepped out of the room, telling defendant "we  
14 gotta go make a phone call," id. at 17, and instructing him to knock on the door if he needed  
15 anything, id.

16 Approximately a half hour later, defendant knocked on the door and Detective Jason  
17 Kasner allowed him to use the bathroom and provided him with a bandage for his hand. Id. at  
18 18. Defendant then asked Detective Kasner about the other officers:

19 Dorsey: They tell you they comin' back in?

20 [Kasner]: Yeah. Did you want 'em back in?

21 Dorsey: Huh?

22 [Kasner]: Did you wanna see Suguro?

23 Dorsey: I mean, they said they was comin' back. I mean, what they gonna do? I  
24 mean, if not . . .

25 [Kasner]: Alright, hold on a second.

1 Id. at 18-19. A half hour later, Detective Suguro opened the door to the room and asked  
2 defendant, “What do you need, Dorsey?” Id. at 19.<sup>2</sup>

3 Dorsey: Oh, I already went to the bathroom.

4 [Suguro]: Oh, did you go already?

5 Dorsey: Yeah.

6 [Suguro]: I thought you wanted to talk to us or something.

7 Dorsey: Yeah. I’m wondering when ya’ll was coming back. I mean, am I just  
8 sitting here or . . .

9 [Suguro]: You’re just sitting there. Do you wanna talk to us or what?

10 Dorsey: I been told ya’ll that. Ya’ll left. I didn’t tell you guys to leave. Ya’ll  
11 left.

12 [Suguro]: Okay. Well do you wanna talk to us then?

13 Dorsey: I signed the paper to talk to you, didn’t I?

14 [Suguro]: Okay. Let me get my stuff.

15 Id. The detectives returned to the room and Detective Suguro re-read defendant his Miranda  
16 rights, which defendant acknowledged in writing. Id. at 20. After Detective Suguro clarified  
17 that defendant wished to talk without his attorney present, id., defendant signed a waiver of  
18 rights form, id. at 21.

19 At the February 11, 2009 evidentiary hearing, the Court concluded from the bench that  
20 defendant clearly invoked his right to counsel when he told the detectives, “I did have an  
21 attorney present there. I do want an attorney present. But, I got valuable information for you  
22 . . .” Id. at 14; see Dkt. #194. The Court found that defendant’s desire to have an attorney  
23 present was not inconsistent with or rendered equivocal by his desire to give information to the  
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25 <sup>2</sup> The transcript reads, “Greetings Dorsey,” id. at 19, but upon reviewing the DVD of the  
26 interview, the Court agrees with the government, see Dkt. #151 at 9 n.8, that this is incorrect.

1 police. The Court requested further briefing, however, on whether defendant subsequently  
2 initiated conversation with detectives and waived his previously-asserted right to counsel.

### 3 **B. Analysis**

4 In Edwards v. Arizona, 451 U.S. 477 (1981), the Supreme Court held that “an accused,  
5 . . . having expressed his desire to deal with the police only through counsel, is not subject to  
6 further interrogation by the authorities until counsel has been made available to him, *unless the*  
7 *accused himself initiates further communication, exchanges, or conversations with the police,”*  
8 *id.* at 484-85 (emphasis added). In determining whether the accused waived his Fifth  
9 Amendment right to have counsel present during interrogation, the government must show (1)  
10 that the accused initiated the conversation, and (2) that “the purported waiver was knowing and  
11 intelligent and found to be so under the totality of the circumstances[.]” Oregon v. Bradshaw,  
12 462 U.S. 1039, 1045, 1046 (1983) (quoting Edwards, 451 U.S. at 486 n.9).

13 “[T]here are undoubtedly situations where a bare inquiry by either a defendant or by a  
14 police officer should not be held to ‘initiate’ any conversation or dialogue. There are some  
15 inquiries, such as a request for a drink of water or a request to use a telephone that are so routine  
16 that they cannot be fairly said to represent a desire on the part of an accused to open up a more  
17 generalized discussion relating directly or indirectly to the investigation.” *Id.* at 1045. In this  
18 vein, defendant’s request of Detective Kasner to use the bathroom, Dkt. #151, Attach. A at 18,  
19 did not “initiate” a conversation under Edwards since it “relat[ed] to routine incidents of the  
20 custodial relationship,” Bradshaw, 462 U.S. at 1045.

21 It is a much closer question, however, whether defendant’s subsequent inquiry as to what  
22 the detectives were going to do constituted an Edwards initiation. In Bradshaw, the plurality  
23 found that in asking, “Well, what is going to happen to me now?”, the respondent “evinced a  
24 willingness and a desire for a generalized discussion about the investigation.” *Id.* at 1045-46.  
25 Here, defendant similarly asked a forward-looking, general question about the officers’

1 intentions when he asked Detective Kasner, “I mean, they said they was comin’ back. I mean,  
2 what they gonna do?” Dkt. #151, Attach. A at 19.

3 But the Court need not even reach the Edwards initiation question if the initial  
4 interrogation never actually ended. While in Bradshaw, “[t]he officer immediately terminated  
5 the conversation” after the respondent requested an attorney, 462 U.S. at 1042, here the  
6 detectives continued to question defendant after he invoked his right to counsel until they  
7 satisfied themselves that he had changed his mind. The detectives assured him that “nothing’s  
8 going to be twisted,” Dkt. #151, Attach. A at 14, and persisted in probing whether defendant  
9 “want[ed] to continue to talk or not,” id. at 15. Although defendant indicated he had questions  
10 regarding his Miranda rights, id., Detective Suguro told him to “hold on” so that he could clarify  
11 whether defendant wanted to talk to them without an attorney present, id. Finally, defendant  
12 agreed. Id. The interrogation continued without pause, and the detectives began to question  
13 defendant about a stolen car. Id. at 16. At no point, then, did the detectives cease interrogating  
14 defendant.

15 The government suggests that the police “stopped the interview” when they left the  
16 interview room. Dkt. #198 at 5. But that does not cure their failure to stop the interview upon  
17 defendant’s request for counsel. Shedelbower v. Estelle, 885 F.2d 570 (9th Cir. 1989), cited by  
18 the government, Dkt. #198 at 4-6, only bolsters the Court’s conclusion. In Shedelbower, after  
19 the defendant invoked his right to counsel, the officers gathered their materials to leave when  
20 one of them told the defendant that the victim had identified him as the perpetrator. 885 F.2d at  
21 572. Approximately five minutes after requesting an attorney, the defendant changed his mind  
22 and told the officers “he wanted to talk about the case and he did not need any attorney present.”  
23 Id. Although the Ninth Circuit held that the defendant’s “specific request for further discussion”  
24 initiated a re-interrogation, id. at 574, the “first question” the Ninth Circuit addressed before  
25 even reaching the Edwards initiation issue was “whether the interrogation ceased immediately  
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1 after [the defendant] requested an attorney,” id. at 573. The Ninth Circuit found that the  
2 officer’s remarks about the victim’s identification did “not constitute interrogation in the normal  
3 sense of the word” since they were not in the form of express questions and “were not the  
4 functional equivalent of questioning.” Id. Here, by contrast, the interrogation of defendant did  
5 not cease “immediately after he requested an attorney,” id.<sup>3</sup> Instead, the detectives’ continued  
6 questioning, see Dkt. #151, Attach. A at 14-16, “constitute[d] interrogation in the normal sense  
7 of the word,” Shedelbower, 885 F.2d at 573. The detectives’ decision to leave the room only  
8 after ignoring defendant’s Miranda rights and convincing him to change his mind does not  
9 satisfy their obligation to cease all questioning and await defendant’s initiation of contact.

10 Moreover, even when the detectives did eventually leave the room, they gave no  
11 indication that they had ended the interview at all. Instead, they left mid-conversation only to  
12 “make a phone call,” Dkt. #151, Attach. A at 17. When defendant asked whether “this [was]  
13 gonna be a while,” id. at 18, Detective Suguro assured him, “No. We’ll be right back.” After  
14 waiting about thirty minutes, defendant told Detective Kramer that “they said they was comin’  
15 back,” and asked “what they gonna do?” Id. at 19. It is evident from the context that defendant  
16 was asking specifically whether the detectives were going to return as they had promised, not  
17 generally how the case against him was going to proceed. The question logically followed from  
18 defendant’s ongoing, albeit interrupted conversation with the detectives.

19 In sum, the entire conversation between defendant and the detectives followed from the  
20 initial Miranda violation. The detectives failed to respect defendant’s request for an attorney,  
21 and persisted in precisely the type of “badger[ing]” that Edwards sought to protect against,  
22 Bradshaw, 462 U.S. at 1044. Once defendant changed his mind about talking to police without  
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24 <sup>3</sup> By the government’s own admission, the “questioning ceased within a minute of the last time  
25 Defendant confirmed that he wished to proceed without an attorney,” Dkt. #151 at 17, not immediately  
26 after defendant invoked his right to counsel by stating “I do want an attorney present,” Dkt. #151,  
Attach. A at 14.

1 an attorney present, the interview proceeded to the substance of the charge against him. The  
2 detectives left the room only after their unlawful interrogation of defendant was in full swing.  
3 Defendant could hardly have re-initiated conversation with the detectives when the detectives  
4 had made clear that the interview was still in progress regardless of his request for counsel.

### 5 **III. CONCLUSION**

6 For the foregoing reasons, the Court GRANTS defendant's motion to suppress (Dkt.  
7 #131).

8  
9 DATED this 13<sup>th</sup> day of March, 2009.

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16 Robert S. Lasnik  
17 United States District Judge  
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